IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

CRP.No. 204 of 2007()

AGAINST THE ORDER DATED 20/01/2007 IN IA.100/2006,77/2002 IN OS.58/1981 of SUB COURT, KASARAGOD

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REVN. PETITIONER: PETITIONERS/DEFENDANTS 1 AND 4
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1. B SUDHAKARA MANOLITHAYA, AGED 59 YEAS,
S/O.KRISHNA MANOLITHAYA, HINDU, AGRICULTURIST,
R/AT EDAKKAL HOUSE,PERUMBALA VILLAGE OF
KASARAGOD TALUK, POST PERUMBALA.

2. GOWRI, AGED 43 YEARS,
D/O.KRISHNA MANOLITHAYA, HINDU, AGRICULTURIST,
R/AT EDAKKAL HOUSE, PERUBALA VILLAGE,
KASARAGOD TALUK, POST PERUMBALA.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

RESPONDENTS: RESPONDENTS/PLAINTIFF & DEFENDANTS 3 & 5
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1. K.PREMALATHA D/O.KRISHNA MANOLITHAYA,
HINDU, HOUSEHOLD,R/AT KEKEKARA PUDIYA VEEDU,
PERUMBALAYA VILLAGE, KASARAGOD TALUK,
POST PERUMBALAYA.

2. SANTHA AMMA D/O.KRISHNA MANOLITHAYA
AND W/O.SADASHIVA THERKUNJATHAVYA, HOSEHOLD,
R/AT DURGA NIVAS, MEETHAL MANGAD, BARE VILLAGE,
KASARAGOD TALUK, POST BARE.

3. SHALINI D/O.PRABHAKARA SARALAYA AND
D/O.VENKATRAMAN MOODITHAYA, HOUSEHOLD,
RESIDING AT LAXMI NIVAS, KAYYAR VILLAGE,
KASARAGOD TALUK, POST UPPALA.

R1 TO R3 BY ADV. SRI.V.T.MADHAVAN UNNI
SRI.V.A.SATHEESH
SRI.V.JOHN SEBASTIAN RALPH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007, ALONG WITH CRP NO. 363 OF 2007 & CRP NO. 449 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 539 OF 2007
IN
C.R.P. NO.204 OF 2007

DISMISSED

29/6/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NOs. 204, 363 &
449 OF 2007

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Dated this the 29th day of June, 2007.

O R D E R

These revision petitions are filed by defendants 1 and 4 against the orders passed in I.A.100/06, 101/06 and I.A.886/05 in final decree application I.A.77/02 in O.S.58/81. I.A.100/06 is filed seeking to pass a supplemental preliminary decree with respect to the shares of the first defendant and the 4th defendant, i.e., 7/12 and 1/12 respectively. In I.A.101/06, the prayer is to allot 7/12 shares belonging to the first defendant in the final decree proceedings separately and in I.A.886/05 the prayer is to allot 1/12th share of the 4th defendant separately. The Court below heard all the petitions together, found that the petitions cannot be entertained, the Court cannot pass a supplemental preliminary decree and therefore dismissed all these applications.

2. At the out set I may like to point out that when a suit for partition is filed irrespective of the fact whether one pays the Court fee or not, it is obligatory on the part of the Court to declare the share which the parties are entitled to. The only restriction is that allotment shall not be made unless the requisite Court fee is

paid. In this case, unfortunately the Court which passed the preliminary decree did not choose to declare the shares. Suppose there is a conflict between the parties regarding the shares then the whole preliminary decree proceedings may have to be reopened and retried which will result in unnecessary embarrassment and it will be actually cutting at the root of the finality of the matter. But in cases where there is no dispute between parties regarding the quantum of shares and when there is an omission in the preliminary decree to declare the shares and when the final decree proceedings had not culminated, in order to avoid multiplicity of proceedings and to do justice to all the parties in a partition suit, it is only just and equitable to pass a preliminary decree and thereafter pass a final decree in terms of the preliminary decree.

3. In the case before me the Commissioner has inspected the property and set apart the share of the plaintiff and 5th defendant. The learned counsel for the revision petitioner/defendants 1 and 4 has submitted that it need not be shaken but out of the property which remains undivided he wants 7/12th shares be allotted to the first defendant and 1/12th shares to the 4th defendant. This will not cause any embarrassment or

difficulty for any of the parties, except the fact that it may take a month's time also to finalize the proceedings. If it is done at this stage the multiplicity of proceedings and unnecessary litigation can be averted. Therefore, in the substantial justice I am inclined to dispose of the CRPs as follows:

(1) In I.A.100/06, I direct the Court below to pass a supplemental preliminary decree holding that defendant No.1 is entitled to 7 out of 12 shares and defendant No.4 is entitled to 1 out of 12 shares. The Court should also declare that D2 and D3 are also entitled to 1 out of 12 shares each.

(2) Thereafter, the Court below is directed to give instructions to the Commissioner to allot 7/12 shares to the first defendant and 1/12 share to the 4th defendant. It goes without saying defendants 1 and 4 should pay the requisite Court fee for separate allotment of their shares. I also make it clear that the allotment done by the Commissioner in favour of the plaintiff and 5th defendant shall not be disturbed and 7/12 share to first defendant and 1/12 share to 4th defendant be allotted from the property which is now left by the Commissioner as residuary property in the case. The Court below is also directed to expedite the matter and direct the very same Commissioner to finish the

allotment within a span of 6 weeks and pass a final decree at the earliest.

It is also made clear that expenses necessary for effecting the division has to be met by the defendants 1 and 4 in proportionate to their shares.

The C.R.Ps. are disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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